

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

KEN JOHANSEN, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

LIBERTY MUTUAL GROUP, INC.; and
SPANISH QUOTES, INC. d/b/a
WESPEAKINSURANCE,

Defendants,

LIBERTY MUTUAL GROUP, INC.,

Crossclaimant,

v.

SPANISH QUOTES, INC. d/b/a
WESPEAKINSURANCE,

Crossdefendant,

LIBERTY MUTUAL GROUP, INC.,
LIBERTY MUTUAL INSURANCE
COMPANY,

Third-party Plaintiffs,

v.

PRECISE LEADS, INC., and DIGITAS, INC.,

Third-party Defendants.

NO. 1:15-cv-12920-ADB

DEMAND FOR JURY

JOINT MOTION TO LIFT STAY AND SET A CASE MANAGEMENT SCHEDULE

The parties¹ respectfully request that this Court lift the stay currently in place in this matter and amend the case management schedule, setting deadlines in this case through class certification. In support of this motion, the parties state:

1. Plaintiff filed this proposed class action lawsuit on July 8, 2015. Plaintiff alleged that defendants Liberty Mutual Group Inc. (“Liberty Mutual”), and Spanish Quotes, Inc. d/b/a WeSpeakInsurance (“Spanish Quotes”), violated the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227. (ECF No. 1.)
2. On December 1, 2015, the Court held the initial Rule 16 Scheduling Conference. (ECF No. 47.) At that time, the Court set, *inter alia*, a fact discovery deadline of June 1, 2016. (ECF No. 49.)
3. On March 24, 2016, Liberty Mutual filed a third-party complaint, naming Digitas, Inc. and Precise Leads, Inc. as third-party defendants. (ECF No. 61.) Liberty Mutual also has alleged cross claims against Spanish Quotes. (*Id.*)
4. On April 20, 2016, Digitas moved to dismiss both Plaintiff’s complaint and Liberty Mutual’s third-party complaint. (ECF No. 69.)
5. On May 16, 2016, Plaintiff moved to extend the discovery deadlines. (ECF No. 92.)
6. On May 27, 2016, the Court granted Plaintiff’s motion to extend the discovery deadlines. (ECF No. 109.) The Court adopted the deadlines requested by Plaintiff. (*Id.*)

¹ This joint motion is submitted by all parties except Spanish Quotes. Plaintiff reached out to Spanish Quotes’ counsel several times by phone and by email to get input on the submission, but received no response.

7. On June 8, 2016, the Court stayed discovery pending a ruling on Digitas's motion to dismiss.

8. This Court denied Digitas's motion on December 8, 2016 (ECF No. 123) and denied Digitas's subsequent motion for interlocutory appeal (ECF No. 124).

9. The deadlines that the Court stayed pending resolution of the motion to dismiss have passed. The parties have conferred and have largely agreed to an amended schedule for completing discovery and class certification. The only difference between the parties' proposed schedules is that Plaintiff requests that the schedule include a deadline for rebuttal expert disclosures, which was not included in the Court's original schedule.

Plaintiff's Position

Plaintiff's request is consistent with Fed. R. Civ. P. 26(a)(2)(D)(ii), which permits a party to submit a rebuttal expert report "within 30 days after the other party's disclosure." To make sure Defendants have time to review the report before their class certification opposition, Plaintiff agrees to produce his rebuttal expert report only eleven days after Defendants make their disclosure(s). Permitting Plaintiff the opportunity to submit a rebuttal report will set the proposed schedule back only six days. By contrast, Defendants' suggestion that Plaintiff file a motion for a rebuttal report is not contemplated by the rules, would be inefficient, and very likely would cause even further delay.

Defendants/Third-Party Defendants' Position

The Defendants/Third-Party Defendants object to Plaintiff's inclusion of Rebuttal Expert Disclosures on the basis that such rebuttal reports were not included in the schedule adopted by the Court on May 27, 2016, which was based on Plaintiff's proposed schedule, and should not be included at this stage of this litigation. Moreover, the Court made it clear when it imposed the

stay in this matter, that if the Court lifted the stay in the future, it would revise the dates on the current schedule in the case only. If Plaintiff believes it needs a Rebuttal Expert, then it can move for leave when the justifying circumstances present themselves.

The parties' respective proposed schedules are as follows:

EVENT	PLAINTIFF'S PROPOSED DEADLINE	DEFENDANTS/THIRD-PARTY DEFENDANTS' PROPOSED DEADLINE
Deadline to Respond to Outstanding Discovery Requests (any documents or ESI being produced shall accompany the written responses)	May 26, 2017	May 26, 2017
Fact Discovery Deadline	August 4, 2017	August 4, 2017
Plaintiff's Expert Disclosures (class certification)	September 5, 2017	September 5, 2017
Class Certification Motion	October 6, 2017	October 6, 2017
Defendants/Third-Party Defendants' Expert Disclosures (class certification)	October 9, 2017	October 9, 2017
Plaintiffs' Rebuttal Expert Disclosures	October 20, 2017	No deadline
Expert Discovery Deadline (class certification)	October 27, 2017	October 23, 2017
Class Certification Opposition	November 2, 2017	October 27, 2017
Class Certification Reply	November 16, 2017	November 10, 2017

10. The deadlines set forth above are consistent with the deadline set by the Court on May 27, 2016 with two (2) exceptions. First, in light of the lengthy stay, the parties provided extra time to respond to outstanding discovery requests so that responding parties could have time to revisit where things stood when the case was stayed. Second, the parties extended the

fact discovery period by three (3) weeks to provide an additional buffer in case there are issues related to removing the stay.

11. Plaintiff reserves the right to seek leave to extend or adjust these deadlines if it appears that resolution of any motion to compel or motion for protective order will prejudice his ability to meet these deadlines. Defendants/Third-Party Defendants reserve the right to object to any such motion, and to file responses to Plaintiff's letter to the Court dated April 19, 2017 (ECF No. 135).

For the foregoing reasons, good cause exists to lift the stay and amend the case management schedule. The parties respectfully request that the Court enter a case management schedule with the deadlines set forth in paragraph 9 of this motion.

Dated: May 10, 2017.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jennifer Rust Murray, hereby certify that on May 10, 2017, I filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED this 10th day of May, 2017.

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